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FOOD 4 LESS

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 CARMEN JOHN PERRI, an
13 individual,
14 Plaintiff,
15 v.

16 FOOD 4 LESS, a business of unknown
form; OCEANGATE PROPERTY
17 TWO, LLC , a California limited
liability company; and Does 1-10,
18 Defendants.
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Case No. 2:18-cv-03679-GW-JEM
Honorable George H. Wu

**ANSWER TO COMPLAINT;
DEMAND FOR JURY TRIAL**

Action Filed: April 30, 2018
Trial Date: None Set

1 Defendant Food 4 Less (hereinafter “Defendant”), in answer to plaintiff
2 Carmen John Perri’s (hereinafter “Plaintiff”) Complaint, admits, denies, and alleges
3 as follows:

4 **PARTIES**

5 1. In response to Paragraph 1 of the Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the
7 allegations, and on that basis, denies each and every allegation.

8 2. In response to Paragraph 2 of the Complaint, Defendant is without
9 sufficient knowledge or information to form a belief as to the truth of the
10 allegations, and on that basis, denies each and every allegation.

11 3. In response to Paragraph 3 of the Complaint, Defendant is not required
12 to answer legal conclusions and argument, and on that basis, denies each and every
13 allegation.

14 4. In response to Paragraph 4 of the Complaint, Defendant is without
15 sufficient knowledge or information to form a belief as to the truth of the
16 allegations, and on that basis, denies each and every allegation.

17 5. In response to Paragraph 5 of the Complaint, Defendant is without
18 sufficient knowledge or information to form a belief as to the truth of the
19 allegations, and on that basis, denies each and every allegation.

20 6. In response to Paragraph 6 of the Complaint, Defendant admits that it
21 operates a Food 4 Less business located at 14500 Ocean Gate Avenue, Hawthorne,
22 CA 90250. As to the remaining allegations, Defendant is not required to answer
23 legal conclusions and argument, and on that basis, denies all of them.

24 7. In response to Paragraph 7 of the Complaint, Defendant admits that it
25 operates a Food 4 Less business located at 14500 Ocean Gate Avenue, Hawthorne,
26 CA 90250. As to the remaining allegations, Defendant is not required to answer
27 legal conclusions and argument, and on that basis, denies all of them.

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1 8. In response to Paragraph 8 of the Complaint, Defendant is not required
2 to answer legal conclusions and argument, and on that basis, denies each and every
3 allegation.

4 **JURISDICTION & VENUE**

5 9. In response to Paragraph 9 of the Complaint, Defendant is not required
6 to answer legal conclusions and argument, and on that basis, denies each and every
7 allegation.

8 10. In response to Paragraph 10 of the Complaint, Defendant is not
9 required to answer legal conclusions and argument, and on that basis, denies each
10 and every allegation.

11 11. In response to Paragraph 11 of the Complaint, Defendant is not
12 required to answer legal conclusions and argument, and on that basis, denies each
13 and every allegation.

14 **FACTUAL ALLEGATIONS**

15 12. In response to Paragraph 12 of the Complaint, Defendant is without
16 sufficient knowledge or information to form a belief as to the truth of the
17 allegations, and on that basis, denies each and every allegation.

18 13. In response to Paragraph 13 of the Complaint, Defendant is not
19 required to answer legal conclusions and argument, and on that basis, denies each
20 and every allegation.

21 14. In response to Paragraph 14 of the Complaint, Defendant is not
22 required to answer legal conclusions and argument, and on that basis, denies each
23 and every allegation.

24 15. In response to Paragraph 15 of the Complaint, Defendant denies each
25 and every allegation.

26 16. In response to Paragraph 16 of the Complaint, Defendant denies each
27 and every allegation.

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1 17. In response to Paragraph 17 of the Complaint, Defendant denies each
2 and every allegation.

3 18. In response to Paragraph 18 of the Complaint, Defendant denies each
4 and every allegation.

5 19. In response to Paragraph 19 of the Complaint, Defendant denies each
6 and every allegation.

7 20. In response to Paragraph 20 of the Complaint, Defendant denies each
8 and every allegation.

9 21. In response to Paragraph 21 of the Complaint, Defendant denies each
10 and every allegation.

11 22. In response to Paragraph 22 of the Complaint, Defendant is without
12 sufficient knowledge or information to form a belief as to the truth of the
13 allegations, and on that basis, denies each and every allegation.

14 23. In response to Paragraph 23 of the Complaint, Defendant denies each
15 and every allegation.

16 24. In response to Paragraph 24 of the Complaint, Defendant denies each
17 and every allegation.

18 25. In response to Paragraph 25 of the Complaint, Defendant denies each
19 and every allegation.

20 26. In response to Paragraph 26 of the Complaint, Defendant denies each
21 and every allegation.

22 27. In response to Paragraph 27 of the Complaint, Defendant denies each
23 and every allegation.

24 28. In response to Paragraph 28 of the Complaint, Defendant denies each
25 and every allegation.

26 29. In response to Paragraph 29 of the Complaint, Defendant denies each
27 and every allegation.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

3 **42 U.S.C. § 12181 et seq.**

4 30. In response to Paragraph 30 of the Complaint, Defendant repleads and
5 incorporates by reference, as if fully set forth again herein, the responses contained
6 in paragraphs 1 through 29 of this Answer as set forth above.

7 31. In response to Paragraph 31 of the Complaint, Defendant is not
8 required to answer legal conclusions and argument, and on that basis, denies each
9 and every allegation.

10 32. In response to Paragraph 32 of the Complaint, Defendant is not
11 required to answer legal conclusions and argument, and on that basis, denies each
12 and every allegation.

13 33. In response to Paragraph 33 of the Complaint, Defendant is not
14 required to answer legal conclusions and argument, and on that basis, denies each
15 and every allegation.

16 34. In response to Paragraph 34 of the Complaint, Defendant denies each
17 and every allegation.

18 35. In response to Paragraph 35 of the Complaint, Defendant denies each
19 and every allegation.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION FO THE UCRA, CALIFORNIA CIVIL CODE § 51 et seq.**

22 36. In response to Paragraph 36 of the Complaint, Defendant repleads and
23 incorporates by reference, as if fully set forth again herein, the responses contained
24 in paragraphs 1 through 35 of this Answer as set forth above.

25 37. In response to Paragraph 37 of the Complaint, Defendant denies each
26 and every allegation.

27 38. In response to Paragraph 38 of the Complaint, Defendant denies each
28 and every allegation.

1 *California Dept. of Transp.*, 2009 WL 2982840, *1 (N.D. Cal. 2009) (California's
2 two-year limitations period for personal injury actions applies to federal disability
3 discrimination claims brought in California).

4 **FOURTH AFFIRMATIVE DEFENSE**

5 (Effective Access)

6 4. The purported architectural barriers provide effective access to
7 Plaintiff. Even if the features alleged in the Complaint did not comply with
8 applicable access standards, the features nonetheless provided effective access to
9 Plaintiff because any alleged noncompliance was de minimis, the features were
10 usable and accessible despite their alleged noncompliance, and/or Plaintiff was able
11 to use and access the features.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 (Removal of Architectural Barriers Was Not Readily Achievable)

14 5. Any allegedly wrongful acts or omissions performed by Defendant or
15 its agents, if there were any, do not subject Defendant to liability because the
16 removal of the alleged architectural barriers identified in the Complaint was not
17 readily achievable or easily accomplishable and/or able to be carried out without
18 much difficulty or expense when taking into account the factors set forth at 42
19 U.S.C. § 12181.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 (Full Compliance is Structurally Impracticable)

22 6. Any allegedly wrongful acts or omissions performed by Defendant or
23 its agents, if there were any, do not subject Defendant to liability because full
24 compliance with the accessibility requirements for the alleged barriers identified in
25 the Complaint would be structurally impracticable.

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1 **SEVENTH AFFIRMATIVE DEFENSE**

2 (Alterations Were Made to Ensure that the Facility Would Be Readily Accessible to
3 the Maximum Extent Feasible)

4 7. Without conceding that Defendant made any “alterations” within the
5 meaning of disability access laws, any allegedly wrongful acts or omissions
6 performed by Defendant or its agents, if there were any, does not subject Defendant
7 to liability because any “alterations” to the subject property, including to the
8 features alleged in the Complaint, were made to ensure that the facility would be
9 readily accessible to the maximum extent feasible. 28 C.F.R. § 36.402.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 (The Cost and Scope of Alterations to Path of Travel to Altered Area Containing a
12 Primary Function is Disproportionate to the Cost of the Overall Alteration)

13 8. Any allegedly wrongful acts or omissions performed by Defendant or
14 its agents, if there were any, do not subject Defendant to liability because the cost
15 and scope of any and all alterations to the path of travel to the altered area
16 containing a primary function, if any, would be disproportionate to the cost of the
17 overall alteration to the primary function area, if any.

18 **NINTH AFFIRMATIVE DEFENSE**

19 (Defendant Provided Services Via Alternative Methods)

20 9. Any allegedly wrongful acts or omissions performed by Defendant or
21 its agents, if there were any, do not subject Defendant to liability because Defendant
22 accommodated or were ready and willing to accommodate Plaintiff’s alleged
23 disability by providing access via “alternative methods” other than the removal of
24 alleged architectural barriers (42 U.S.C. §12182), such as, by personally assisting
25 Plaintiff overcome/deal with any of the barriers alleged in the Complaint.

26 **TENTH AFFIRMATIVE DEFENSE**

27 (Good Faith Reliance Upon Local Building Authorities)

28 10. Plaintiff’s Complaint and each claim alleged therein are barred by

1 Defendant's good faith reliance upon reasonable interpretations of California law by
2 local building authorities and issuance of appropriate building permits and
3 Certificates of Occupancy for the facilities at issue.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 (Unclean Hands)

6 11. Plaintiff's claims are barred under the doctrine of unclean hands.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 (Privilege)

9 12. Defendant's conduct was privileged because it was undertaken
10 pursuant to the terms of the applicable laws, regulations, orders, and approvals
11 relating to building construction and/or fire safety and public safety.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 (Technically Infeasible)

14 13. Any allegedly wrongful acts or omissions performed by Defendant or
15 its agents, if there were any, does not subject Defendant to liability because full
16 compliance with the standards for the alleged architectural barriers identified in the
17 Complaint would be technically infeasible .

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 (Undue Burden)

20 14. Insofar as Defendant has not made alterations to the facility at issue,
21 which Plaintiff contends should have been made, those changes were not and are not
22 required under federal or California law, and any requirements to make those
23 changes would impose an undue burden upon Defendant.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 (Estoppel)

26 15. Plaintiff is estopped by her conduct from recovering any relief under
27 the Complaint.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Waiver)

16. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

17. Plaintiff failed to properly mitigate her alleged damages and therefore is precluded from recovering those alleged damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Preemption)

18. Plaintiff's state law claims are preempted by federal law.

NINETEENTH AFFIRMATIVE DEFENSE

(Indispensable Party)

19. Plaintiff's alleged claims are barred, in whole or in part, because of her failure to name an indispensable party or parties.

TWENTIETH AFFIRMATIVE DEFENSE

(Good Faith Reliance Upon Advice Of Architects)

20. Plaintiff's claims are barred by reason of Defendant's good faith reliance upon the advice of architects with respect to the subject facility.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Fundamental Alteration)

21. Any allegedly wrongful acts or omissions performed by Defendant or its agents, if there were any, do not subject Defendant to liability because the relief demanded in the Complaint would, if granted, result in a fundamental alteration of Defendant's services.

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1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 (Legitimate Business Justifications)

3 22. The Complaint, and each and every purported claim alleged therein,
4 fails to state facts sufficient to constitute a claim against Defendant because any
5 action taken with respect to Plaintiff was for legitimate, non-discriminatory business
6 reasons unrelated to Plaintiff's alleged disability or other asserted protected status.

7 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

8 (No Damages)

9 23. Defendant is informed and believe and based thereon allege that
10 Plaintiff has not suffered any damage as a result of any actions taken by Defendant,
11 and Plaintiff is thereby barred from asserting any claim against Defendant.

12 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

13 (Good Faith)

14 24. Defendant and its agents, if any, acted reasonably and in good faith at
15 all times material herein, based on all relevant facts, law, and circumstances known
16 by them at the time that they acted. Accordingly, Plaintiff is barred, in whole or in
17 part, from any recovery in this action.

18 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

19 (Mootness)

20 25. Plaintiff's claims are barred under the doctrine of mootness.

21 **TWENTY-SIX AFFIRMATIVE DEFENSE**

22 (Dimensional Tolerances)

23 26. Plaintiff's claims are barred because the features identified in the
24 Complaint substantially comply with the applicable law and are within "dimensional
25 tolerances."

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1 3. That Defendant be awarded its costs of suit incurred in defense of this
2 action, including its reasonable attorney's fees; and

3 4. For such further and other relief as the Court may deem just and proper.

4 Dated: May 18, 2018

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6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

7
8 By /s/ Gregory F. Hurley
9 GREGORY F. HURLEY

10 Attorneys for Defendant,
11 FOOD 4 LESS

12 **DEMAND FOR JURY TRIAL**

13 Defendant hereby demands a trial by jury.

14
15 Dated: May 18, 2018

16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17
18 By /s/ Gregory F. Hurley
19 GREGORY F. HURLEY

20 Attorneys for Defendant,
21 FOOD 4 LESS